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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/985,755	11/06/2001	Naoto Kudo	215291US0	4371

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/985,755	Applicant(s) KUDO ET AL.	
	Examiner Drew E Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it contains two separate paragraphs. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 9 recites the limitation "said constituent fatty acids of said monoglycerides". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7 and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Yokomichi et al [Pat. No. 5,514,405] as evidenced by Applicants' Admitted Prior Art (page 1, line 25) and Fennema [Food Chemistry].

Yokomichi et al teach a fried food comprising fried potatoes (column 21, line 39), an oil composition including less than 2% monoglycerides and 20-40% diglycerides (column 8, lines 1-21), the monoglycerides and diglycerides originating from rapeseed oil and soybean oil (column 8, line 25), the use of antioxidants (column 1, lines 56-64), the potatoes inherently absorbing 30-50% oil, as evidenced by Applicants' Admitted Prior Art (page 1, line 25), and the soybean oil and rapeseed (or canola) oil inherently providing the required amounts of linolenic acid (page 959, Table 8). Phrases such as "oil-cooked" and "baked" are merely preferred methods of making the claimed product.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yokomichi et al, as evidenced by AAPA and Fennema, as applied above.

Yokomichi et al, as evidenced by AAPA and Fennema, teach the above mentioned components. Yokomichi et al does not recite the potato having an oil level of 7-18%. It would have been obvious to one of ordinary skill in the art to provide an oil level of 7-18% in the potato of Yokomichi et al since low-fat products were highly desirable to

consumers and since the oil level 7-18% would have provided increased consumer demand for the potatoes of Yokomichi et al.

9. Claims 1-7 and 9-16 are rejected under 35 U.S.C. 102(b) as anticipated by (as explained above) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yokomichi et al, as evidenced by AAPA, in view of DeBonte et al.

Yokomichi et al and AAPA teach the above mentioned components. Yokomichi et al do not specifically recite the unsaturated fatty acid being 20-80% linolenic acid. DeBonte et al teach a potato product containing canola (or rapeseed) oil containing 7% linolenic acid (column 18, claim 1; column 5, Table 1). It would have been obvious to one of ordinary skill in the art to incorporate the canola oil of DeBonte et al into the invention of Yokomichi et al since both are directed to potato products, since Yokomichi et al already included rapeseed (or canola) oil (column 8, line 25), and since the canola oil of DeBonte et al provided improved sensory characteristics and increased oxidative stability (abstract). Yokomichi et al does not recite the potato having an oil level of 7-18%. It would have been obvious to one of ordinary skill in the art to provide an oil level of 7-18% in the potato of Yokomichi et al since low-fat products were highly desirable to consumers and since the oil level 7-18% would have provided increased consumer demand for the potatoes of Yokomichi et al.


Response to Arguments

10. Applicant's arguments with respect to claims 1-7 and 9-16 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761
